

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NATIONAL STARCH AND CHEMICAL
INVESTMENT HOLDING
CORPORATION, PENFORD
AUSTRALIA LTD., and PENFORD
HOLDINGS PTY,

Plaintiffs,

v.

CARGILL, INC. and
MGP INGREDIENTS, INC.,

Defendants.

C.A. No. 1443-GMS

JURY TRIAL DEMANDED

DEFENDANT MGP INGREDIENTS INC.'S ANSWER

MGP Ingredients, Inc. ("MGPI") denies each allegation contained in the complaint of plaintiffs National Starch and Chemical Investment Holding Corporation, Penford Australia Ltd., and Penford Holdings Pty. ("National Starch") unless the factual allegation is expressly admitted herein. For factual allegations that are admitted, MGPI's admission extends to only the specific admitted facts; MGPI expressly does not admit to any purported conclusions, characterizations, implications, or speculations that arguably follow from any admitted facts.

MGPI denies that National Starch is entitled to the relief they requested or any other relief.

ANSWER

1. MGPI admits that National Starch alleges patent infringement under the Patent Laws of the United States, and that they are seeking damages and injunctive relief.
2. MGPI lacks sufficient knowledge to admit or deny the allegations of paragraph 2 and on that basis denies the allegations of paragraph 2.

3. MGPI lacks sufficient knowledge to admit or deny the allegations of paragraph 3 and on that basis denies the allegations of paragraph 3.

4. MGPI lacks sufficient knowledge to admit or deny the allegations of paragraph 4 and on that basis denies the allegations of paragraph 4.

5. MGPI lacks sufficient knowledge to admit or deny the allegations of paragraph 5 and on that basis denies the allegations of paragraph 5.

6. Admitted.

7. Admitted.

8. MGPI lacks sufficient knowledge to admit or deny the allegations of paragraph 8 and on that basis denies the allegations of paragraph 8.

9. Denied.

10. Denied.

11. MGPI admits that the front of U.S. Patent No. 5,977,454 (“the ‘454 patent”) states that the patent issued on November 2, 1999, and that it is entitled “High Amylose Starch and Resistant Starch Fractions.” MGPI denies the remaining allegations of paragraph 11.

12. MGPI admits that the front of U.S. Patent No. 6,409,840 (“the ‘840 patent”) states that the patent issued on June 25, 2002, and that it is entitled “High Amylose Starch and Resistant Starch Fractions.” MGPI denies the remaining allegations of paragraph 12.

13. MGPI lacks sufficient knowledge to admit or deny the allegations of paragraph 13 and on that basis denies the allegations of paragraph 13.

14. Denied.

15. Denied.

16. Denied

AFFIRMATIVE DEFENSES

17. In addition to the affirmative defenses set forth below, MGPI reserves the right to allege additional affirmative defenses as factual information supporting additional affirmative defenses becomes known during discovery.

**First Affirmative Defense
(Invalidity)**

18. For this affirmative defense, MGPI adopts-by-reference, and reincorporates here as if set forth in their entirety, paragraphs 1-17 of this pleading.

19. The '454 and '840 patents are invalid because each fails to satisfy the conditions for patentability specified in Title 35 of the United States Code including, but not limited to, sections 102, 103, and 112.

**Second Affirmative Defense
(Non-Infringement)**

20. For this affirmative defense, MGPI adopts-by-reference, and reincorporates here as if set forth in their entirety, paragraphs 1-19 of this pleading.

21. MGPI has not infringed and is not infringing (either directly, contributorily, or by inducement) any valid and enforceable claim of the '454 or '840 patents.

WHEREFORE, MGPI prays for judgment:

1. That the Court dismiss the Complaint of National Starch with prejudice;
2. That National Starch take nothing by reason of their Complaint;
3. That the Court adjudge the '454 and '840 patent claims are invalid;
4. That the Court adjudge that MGPI is not, and has not, infringed (either directly, contributorily, or by inducement) the '454 and '840 patent claims;
5. That the Court permanently enjoin National Starch—and all persons acting on their behalf, or in concert with them—from charging, orally or in

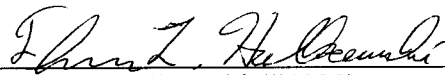
writing, that MGPI infringes any claim of the '454 or '840 patents (either directly, contributorily, or by inducement);

6. That the Court award MGPI its costs, expenses, and attorney fees in this action; and
7. That the Court award MGPI any other and further relief as the Court may deem appropriate.

By this pleading, MGPI demands a trial by jury of any issues triable of right by a jury.

Dated: March 4, 2005

FISH & RICHARDSON P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2005, I electronically filed **DEFENDANT MGP INGREDIENTS INC.'S ANSWER** with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

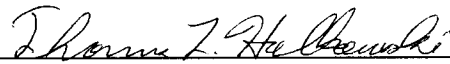
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I hereby certify that on March 4, 2005, I have mailed by United States Postal Service, the document(s) to the following non-registered participant:

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